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CHAPTER 7

PERSONNEL SECURITY DETERMINATIONS

7-1 BASIC POLICY

1. The standard which must be met for security clearance eligibility or assignment to sensitive duties is that, based on all available information, the individual's loyalty, reliability and trustworthiness are such that entrusting them with classified information or assigning the individual to sensitive duties is clearly consistent with the interests of national security.
2. A determination to grant security clearance eligibility, authorize access to classified information, or assign an individual to sensitive duties will be based on an investigation conducted in accordance with the requirements specified in chapter 6.
3. E.O. 10450 and E.O. 12968 establish the standards which provide the basis for personnel security determinations. These standards apply to all U.S. Government civilian and military personnel, consultants, contractors, and other individuals who require access to classified information or assignment to sensitive duties. Appendix F synthesizes these standards.
4. The adjudicative guidelines used for determinations of security clearance eligibility are the same guidelines applied when determining eligibility to occupy a sensitive position. A favorable determination of security clearance eligibility also provides a favorable determination of eligibility to occupy a sensitive position, and vice versa, whether or not the individual requires access to classified information to perform sensitive duties. A determination by the DON CAF that an individual is not eligible for assignment to sensitive duties will also result in the removal of security clearance eligibility. Conversely, a determination that an individual is not eligible for a security clearance will result in the denial of eligibility for assignment to a sensitive position.
5. In making determinations regarding an individual's loyalty, reliability and trustworthiness, all information, favorable and unfavorable, is considered and assessed for accuracy, completeness, relevance, importance and overall significance. The final determination is the result of an overall common sense "whole person" adjudication, reached by application of the guidelines in appendix G.

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6. Unless there is a reasonable basis for doubting a person's loyalty to the Government of the United States, decisions regarding appointment or retention in civilian employment or acceptance or retention in the Navy and Marine Corps are governed by personnel policies not under the purview of this regulation.

7. No separation under other than honorable conditions will be taken with respect to any Navy or Marine military member, nor will any action be taken to effect the separation, dismissal, discharge, or other involuntary separation for cause of any DON civilian employee or any contractor/consultant employee under the personnel security cognizance of the DON, in any case where the individual has held access to Sensitive Compartmented Information (SCI) and/or Special Access Programs (SAPs) within 18 months prior to the proposed action, unless approval is first received from the program manager (i.e. the Director of Naval Intelligence (DNI) for SCI access or CNO (N89) for SAP's.

7-2 PERSONNEL SECURITY PROGRAM AUTHORITIES AND RESPONSIBILITIES

1. The authority to determine eligibility for access to classified information or assignment to sensitive duties is vested in the Secretary of the Navy. This authority and the responsibilities for personnel security program management are delegated as follows:

a. The Chief of Naval Operations Special Assistant for Naval Investigative Matters and Security (N09N) will:

(1) Issue DON Personnel Security Policy.

(2) Assign responsibilities for overall management of the personnel security program.

(3) Maintain the DON Personnel Security Appeals Board (PSAB) and appoint members to ensure due process is afforded in appeals of unfavorable personnel security determinations.

b. The President, PSAB will preside over the PSAB, a three member panel appointed by CNO (N09N) which reviews and decides appeals of unfavorable DON CAF determinations. The decision of the PSAB to sustain or reverse determinations made by the DON CAF is final and concludes the administrative appeal process.

c. The Commandant of the Marine Corps will:

(1) Upon notification of the DON CAF determination, take appropriate action to:

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(a) Ensure the security information in the Marine Corps Total Force System (MCTFS) is both accurately updated from the DON CAF database and reported to commands.

(b) Ensure actions are initiated, as appropriate, following unfavorable personnel security determinations.

(c) Ensure appropriate documentation of security determinations are entered into the individual's master service record.

(2) Notify commands of clearance eligibility and/or investigative requirements associated with transfers to new assignments, as appropriate.

(3) Maintain continuous liaison with CNO (N09N2), the DON CAF, and the PSAB in all matters involving personnel security determinations on Marine Corps military members.

d. The Chief of Naval Personnel will:

(1) Upon notification of the DON CAF determination, take appropriate action to:

(a) Ensure the security information in the military personnel database is both accurately updated from the DON CAF database and reported to commands via the EDVR, and ODCR.

(b) Ensure appropriate actions are initiated following unfavorable personnel security determinations.

(c) Ensure appropriate documentation of security determinations is entered into the individual's master service record.

(2) Notify commands of clearance eligibility and/or investigative requirements associated with transfers to new assignments.

(3) Maintain continuous liaison with CNO (N09N2), the DON CAF, and the PSAB in all matters involving personnel security determinations on Navy military members.

e. The Deputy Assistant Secretary of the Navy (Civilian Personnel/Equal Employment Opportunity) will:

(1) Upon notification of the DON CAF determination, take appropriate action to:

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(a) Ensure the security information in the Defense Civilian Personnel Data System (DCPDS) is both accurately updated from the DON CAF database and reported to commands.

(b) Ensure appropriate documentation of security determinations is entered into the individual's official personnel folder.

(2) Coordinate with CNO (N09N2) and provide guidance to support the requirements of this regulation regarding assignment of civilians to sensitive positions.

f. The Director, Department of the Navy Central Adjudication Facility will:

(1) Adjudicate information from personnel security investigations and other relevant information to determine eligibility for security clearance and SCI access, and/or assignment to sensitive duties and communicate the results of each adjudication to the requesting command.

(2) Validate and certify personnel security clearance eligibility for all DON personnel.

(3) Document personnel security determinations in the Navy Joint Adjudication and Clearance System (NJACS) and the Defense Clearance and Investigations Index (DCII).

(4) Issue a Letter of Intent (LOI) to deny or revoke security clearance eligibility, SCI access or assignment to sensitive duties to every individual for whom an unfavorable personnel security determination is being contemplated.

(5) Issue a Letter of Notification (LON) to every individual for whom an unfavorable personnel security determination has been made, advising the individual of his or her right to appeal the DON CAF determination.

(6) Record and retain rationale underlying each personnel security determination where the investigation or information upon which the determination was made included derogatory information.

(7) Respond to DON command queries regarding the status of personnel security investigations.

(8) Provide clearance certification on behalf of DON personnel to all other DoD and federal agencies when requested.

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g. Commanding Officers will:

(1) Control access to classified information for all assigned personnel.

(2) Request PSIs on personnel assigned to the command as appropriate.

(3) Grant interim personnel security clearances as instructed in paragraph 8-5.

(4) Maintain a personnel security record on all assigned personnel, to include a record of security briefings, a record of clearance determinations and a record of access determinations.

(5) Certify the security clearance of assigned personnel to other activities, as instructed by paragraph 11-2.

(6) Administratively withdraw the access when the requirement for access to classified information no longer exists. Debrief the individual in accordance with chapter 4, and notify the DON CAF that clearance and access are no longer required.

(7) Authorize and limit access according to requirements, lower access authorized, when appropriate.

(8) Continuously evaluate command personnel with regard to their eligibility for access to classified information applying the appendix F standards. Notify the DON CAF when potentially disqualifying information is developed. (The DON CAF will review the information and reevaluate the individual's clearance eligibility using the adjudicative guidelines, provided in appendix G.)

(9) Suspend an individual's access to classified information for cause when warranted, and notify the DON CAF within 10 days. All pertinent information will be forwarded to the DON CAF for a personnel security determination. Once the commanding officer suspends access and reports the information to the DON CAF, access may not be reinstated unless approved by the DON CAF.

(10) Coordinate unfavorable personnel security determination actions concerning personnel assigned to the command. Direct personnel to command assistance programs, as appropriate. Assist affected personnel by explaining the personnel security determination process, provide personnel the

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command instructions provided with the LOI, LON, and PSAB notification letters.

(11) Deny access and/or restrict admittance to command areas as deemed appropriate when disqualifying information regarding an individual from another command is revealed. Ensure the individual's parent command, agency or facility is notified of your action, to include the basis for that action. For contractor employees, report disqualifying issues to the DSS Operating Center, Columbus (OCC) (paragraph 9W-13 applies).

7-3 ADJUDICATIVE OFFICIALS

1. In view of the significance that each adjudicative decision can have on a person's career, and to ensure the maximum degree of fairness and equity in these actions a **minimum level of review** is required for all personnel security determinations.

2. To fulfill responsibilities enumerated in paragraph 7-2g, the commanding officer will ensure the local review is conducted by the security manager (GS-11 or military officer).

3. The following applies to the DON CAF and describes the level of adjudicative expertise required to review the identified investigations:

a. SSBI/PR/SII

(1) Favorable Investigations. Completely favorable investigations will be reviewed and determined to be favorable by an adjudicative official in the civilian grade of GS-7/9 or military rank of O-3.

(2) Unfavorable Investigations. Investigations that are not completely favorable will undergo at least two levels of review by adjudicative officials, the second of which must be in the civilian grade of GS-11/12 or military rank of O-4. When an unfavorable personnel security action is contemplated, the LOI to deny or revoke must be approved and signed by an adjudicative official in the civilian grade of GS-13/14 or military rank of O-5. The final notification of an unfavorable personnel security determination or LON, must be approved and signed by an adjudicative official in the civilian grade of GS-14/15 or military rank of O-6.

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b. SPR/NACI/NAC/ENTNAC/NACLC/ANACI

(1) Favorable Investigations. Completely favorable investigations will be reviewed and determined to be favorable by an adjudicative official in the civilian grade of GS-5/7 or military rank of O-2.

(2) Unfavorable. Investigations that are not completely favorable must be reviewed by an adjudicative official in the civilian grade of GS-7/9 or military rank of O-3. When an unfavorable personnel security action is contemplated, the LOI to deny/revoke must be signed by an adjudicative official in the civilian grade of GS-11/12 or military rank of O-4. The final notification of unfavorable personnel security determination or LON, must be signed by an adjudicative official in the civilian grade of GS-13 or military rank of O-5.

7-4 PERSONNEL SECURITY DETERMINATIONS

1. A personnel security determination is required when:

a. A personnel security investigation on a nominee for a security clearance or assignment to sensitive civilian duties has been completed;

b. Access to classified information or assignment to sensitive duties is necessary under interim conditions;

c. Questionable or unfavorable information becomes available about an individual in a sensitive position or a position requiring access to classified information;

d. The issues that prompted a previous unfavorable personnel security determination no longer exist and the individual is again being considered for clearance or assignment to sensitive duties.

2. The personnel security adjudicative process is an evaluation of investigative and other related information. It does not determine criminal guilt nor the general suitability for a given position. It assesses past behavior as a basis for predicting the individual's future trustworthiness and potential fitness for a position of responsibility which, if abused, could have unacceptable consequences to national security.

3. All information, favorable and unfavorable, must be considered and assessed to determine initial and continued eligibility for access to classified information or assignment to

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sensitive duties. Each case must be weighed on its own merits. The adjudication criteria contained in appendix H is used by the DON CAF in evaluating information in available personnel security investigative files and from other sources, including personnel, medical, legal, law enforcement and security records.

4. Upon receipt of derogatory information at the local command, commanding officers will determine whether, on the basis of all the facts, to suspend or limit an individual's access to classified information, or reassign the individual to nonsensitive duties pending a final determination by the DON CAF. It is essential that all those directly involved in this evaluation process, including security officials, Human Resource Office (HRO) personnel, managers and supervisors, take an objective approach to ensure equity to the subject and the protection of national security.

7-5 TRUSTWORTHINESS DETERMINATIONS

1. As established by the Internal Security Act of 1950, the commanding officer's duty to protect the command against the action of untrustworthy persons is paramount. Normally, the investigative requirements prescribed herein will suffice to enable a determination regarding the trustworthiness of individuals whose duties require access to classified information or who otherwise are appointed to sensitive positions. However, there are certain duties or situations not requiring access to classified information or appointment to a sensitive position, which if performed by untrustworthy persons, could jeopardize the safety or security of people or property of the command or otherwise endanger the national security (including access to restricted areas or sensitive equipment). The commanding officer has the prerogative of requesting a trustworthiness NAC to address such duties or situations except that contractor employees are assessed using the Facility Access Determination (FAD) program discussed in paragraph 7-6.

2. Trustworthiness NACs will be requested using the SF 85P and will be forwarded to DSS for processing. The DON CAF will return the completed investigation to the requesting command for the trustworthiness determination.

3. The criteria provided in appendix G will be used by the requesting command to guide trustworthiness determinations. Trustworthiness determinations are the sole prerogative of the commanding officer. If the commanding officer determines, upon review of the investigation, that allowing a person to perform certain duties or to access certain areas, would pose an

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unacceptable risk, that decision is final. No due process procedures are required.

7-6 FACILITY ACCESS DETERMINATION (FAD) PROGRAM

1. Contractor employees are not normally subjected to investigation unless access to classified information is required, in which case they are investigated and cleared under the National Industrial Security Program. Security clearances will not be granted to contractor employees for ease of movement within a restricted, controlled, or industrial area when their duties do not require direct access to classified information, or if they may only have inadvertent access to sensitive information, areas, or equipment.

2. Nonetheless, many DON commands interact with contractors in matters that involve access to sensitive unclassified information or areas critical to the operations of the command which do not satisfy the prerequisites for personnel security clearances but do, however, warrant a judgement of an employee's trustworthiness. To meet this need, the DON Facility Access Determination (FAD) program has been established to support commanding officers in their responsibility under the Internal Security Act of 1950 to protect persons and property under their command against the actions of untrustworthy persons.

3. Commands will include the FAD program requirements in the contract specifications when trustworthiness determinations will be required on the contractor employees.

4. The procedures for requesting and receiving the results of a FAD NAC mirror the procedures for requesting and receiving the results of a trustworthiness NAC. The command will obtain a completed SF 85P from the contractor employee. The completed questionnaire will be reviewed for completeness, accuracy and suitability issues prior to submission. If the contractor appears suitable after the questionnaire review, the request is forwarded to DSS to conduct the NAC. The completed NAC is sent back to the requesting command via the DON CAF. The command will review the NAC results and make a trustworthiness determination applying the adjudicative criteria outlined in appendix G.

5. Commands will provide written notification to the contractor, advising whether or not the contractor employee will be admitted to the command areas or be given access to unclassified but sensitive information. No further information is required. Requests for DSS investigative data protected under the Privacy Act should be referred to DSS.

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7-7 UNFAVORABLE DETERMINATIONS PROCESS

1. When an unfavorable personnel security determination is being contemplated by the DON CAF, the DON CAF will issue to the individual concerned a LOI to revoke or deny security clearance eligibility, SCI access or sensitive position eligibility. The LOI advises the individual of the proposed action, the reasons therefor and the rebuttal process associated with the proposed action. The LOI will be sent via the individual's command, with a copy provided to CHNAVPERS (Pers 831) for Navy military members and to Headquarters Marine Corps (HQMC) for Marine Corps military members. When SCI access is involved, copies of the LOI's are sent to SSO Navy or COMNAVSECGRU, as appropriate.

2. The command will immediately present the LOI to the individual and assume a direct role in facilitating the process. The command will determine the individual's intent regarding a response to the LOI, and immediately complete and return the Acknowledgement of Receipt of the Letter of Intent accompanying the LOI, to the DON CAF indicating whether the individual intends to submit a response to the contemplated action and whether the command has granted an extension of time to submit the response. The LOI advises the individual that if they choose not to respond, or if the response is untimely, they will forfeit their rights to appeal.

3. Where mail service may prevent a timely return of the Acknowledgement of Receipt of the Letter of Intent, commands may provide the DON CAF a message or facsimile to acknowledge receipt of the LOI and to indicate the individual's intentions. Facsimile correspondence should be used whenever practicable throughout the process.

4. The command will review the information contained in the LOI to determine whether the individual's access to classified information should be suspended while the unfavorable determination process continues. Commands will ensure all suspension actions are accomplished as specified in paragraph 9-18.

5. The recipient of the LOI will have 15 calendar days from receipt of the LOI to prepare and submit a written response. No outside influence will be permitted to forfeit the individual's opportunity to reply.

6. The commanding officer has the authority to grant the recipient of the LOI up to 45 extension days (for a total of 60 days) for the preparation of a response, provided the DON CAF is

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notified of the extension time granted. After 45 extension days, requests for extensions must be directed to the DON CAF with a valid justification.

a. Extensions may be appropriate to enable the individual to obtain a copy of the investigation or information upon which the DON CAF based its intended action, medical or mental evaluation, personal reference letters that will mitigate or rebut the disqualifying information, financial statements, legal counsel or documentation, documentation from rehabilitation institutes, or other related information to support the response.

b. Extensions are not authorized to enable the individual to demonstrate responsibility for an issue that the individual was previously aware of but took no steps to resolve before receiving the LOI. This includes requests for extension to resolve financial or legal matters or to seek treatment for mental, emotional or medical issues presented in the LOI. Extensions are also not authorized to enable mitigation by the passage of time or to otherwise create mitigation not already present.

7. The command must respond immediately after delivery of the LOI to the recipient by forwarding the completed Acknowledgement of Receipt of the Letter of Intent to the DON CAF. Absent command or individual notification of intentions, the DON CAF may issue a final determination after 60 calendar days from the date on the LOI based upon existing information. If expeditious mail service is not used and regular mail service is such as to prevent timely delivery of the individual's response, the command will advise the DON CAF by message or other expeditious means when the "Acknowledgement" is mailed.

8. The DON CAF will adjudicate the response to the LOI within 30 calendar days of receipt and either make a favorable determination and authorize eligibility or issue a LON of denial or revocation of security clearance, SCI access and/or sensitive position eligibility. If a favorable determination is made, individuals will be notified in writing, via their command. If an unfavorable determination is made by the DON CAF, the individual will be notified in writing, citing all factors which were successfully mitigated by the individual's response to the LOI and what unfavorable factors remain dictating denial or revocation. The LON will be sent via the command with a copy to BUPERS (Pers 831) or HQMC for military members and SSO Navy or COMNAVSECGRU, as appropriate, for SCI access issues.

9. The LON will inform the recipient of his/her appeal rights. Upon receipt of the LON, commands must ensure the individual no

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longer occupies a sensitive position and has no further access to national security information, as the individual has been determined to no longer meet the requirements.

7-8 APPEALING UNFAVORABLE DETERMINATIONS

1. The Personnel Security Appeals Board (PSAB) is the ultimate appellate authority for unfavorable personnel security determinations made by the DON CAF. The PSAB structure and functioning is described in appendix H. If an individual chooses to appeal an unfavorable DON CAF determination, the appeal may be submitted either verbally or in writing as follows:

a. Individuals may request a personal appearance before an administrative judge (AJ) from the Defense Office of Hearings and Appeals (DOHA). This appearance is intended to provide the individual an opportunity to personally respond to the DON CAF LON and to submit supporting documentation to the AJ, who will make a recommendation to the PSAB. A transcript of the proceedings with any supplemental documentation will be forwarded with the DOHA recommendation and will serve as the individual's appeal to the PSAB.

b. Individuals may submit a written appeal directly to the PSAB via their command and forego the personal appearance. A written appeal should also include supporting documentation when appropriate.

2. Individuals may select either to personally present their appeal to the DOHA AJ or to submit a written appeal forwarded directly to the PSAB. Individuals may not choose both options. Having or not having a personal appearance will not bias the PSAB in making a fair determination.

3. DOHA PERSONAL APPEARANCES

a. Individuals desiring to present a personal appeal must request a DOHA hearing within 10 days of receipt of the LON.

b. DOHA will normally schedule the personal appearance to be accomplished within 30 days of receipt of the individual's request.

c. Individuals will be provided a notice designating time, date and place for the personal appearance. For individuals at duty stations within the contiguous 48 states, the personal appearance will be conducted at the individual's duty station or a nearby suitable location. For individuals assigned to duty

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stations outside the contiguous 48 states, the site of the personal appearance will be determined by the Director, DOHA or designee at one of the following locations: (1) the individual's duty station; (2) a suitable location near the individual's duty station; or (3) at DOHA facilities located either in the Washington D.C. metropolitan area or the Los Angeles, California metropolitan area.

d. Travel costs for the individual presenting a personal appeal to DOHA will be the responsibility of the individual's command.

e. The individual may be represented by counsel or other personal representative at the individual's expense.

f. Requests for postponement of the personal appearance can be granted only for good cause as determined by the DOHA AJ.

g. Individuals who choose a personal appearance will not have the opportunity to present or cross-examine witnesses. Individuals who desire to present the view of others must do so in writing (e.g. letters of reference, letters from medical authorities, etc.). The appeal should address the disqualifying issues identified by the LON and should present any existing mitigation as defined in appendix G, to include pertinent supporting documentation.

h. The AJ will review the individual's case file, hear the individual's or counsel's or personal representative's presentation and review any documentation submitted by the individual. Then the AJ will develop a recommended determination which will be forwarded along with a transcript of the personal appeal to the PSAB within 30 days of the personal appearance.

i. The value of a command perspective on the PSAB deliberations cannot be overstated. Since appeals presented to DOHA do not have the benefit of a command endorsement, commands are strongly encouraged to submit a position paper directly to the PSAB. However, due to time constraints, the PSAB will only solicit a command position when the appeal contains substantial information that was not included in the individual's rebuttal to the LOI. In these cases the Executive Director, PSAB will contact the command to provide the new information. The command will have 10 days to evaluate the new information and respond to the PSAB.

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4. PSAB WRITTEN APPEAL SUBMISSIONS

a. The individual has 30 days from receipt of the LON to submit a written appeal to the PSAB. The command may extend the time allowed for an additional 15 days for a total of 45 days. Requests for further extensions can only be approved by the Executive Director, PSAB.

b. The written appeal may be made by counsel or personal representative at the individual's expense.

c. Written appeals should address the disqualifying issues identified by the LON and should present any existing mitigation as defined in appendix G, to include pertinent supporting documentation.

d. Commands are strongly encouraged to provide a command perspective by submitting an endorsement to the individual's appeal.

5. PSAB PROCEDURES

a. The PSAB will review the DON CAF case file, the individual's appeal (to include DOHA recommendations and command submissions as provided) and any supporting documentation submitted by the individual. Personal appearances before the PSAB are prohibited.

b. The PSAB will meet on a monthly basis and within 5 days of the Board review will notify the individual, via the individual's command, of the PSAB determination.

c. The PSAB determination is final and concludes the administrative appeals process.

d. The DON CAF will be directed to grant or restore clearances, SCI access eligibility and/or sensitive position eligibility when the PSAB finds for the appellant. When the PSAB finds against the appellant, reconsideration is only possible, if at a later date (generally after 1 year from the date of the final DON CAF determination) the individual's command determines that a valid requirement for access to classified information exists and the issues which caused the unfavorable determination seem to have been mitigated either through the passage of time or other relevant positive developments.

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7-9 UNFAVORABLE PERSONNEL SECURITY ACTIONS

1. An unfavorable personnel security determination will result in one or more of the following personnel security actions:

- a. Denial or revocation of security clearance eligibility ;
- b. Denial or revocation of a Special Access Authorization (including SCI access eligibility);
- c. Non-appointment to or non-selection for sensitive assignment;

2. Military members or civilians will not be removed from employment or separated from the service using this regulation as authority if removal or separation can be effected under administrative (not security) regulations.